

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
NextG Networks of Illinois, Inc.,)	
)	
Complainant,)	File No. EB-09-MD-009
)	
v.)	
)	
RCN Telecom Services of Illinois, LLC,)	
)	
Respondent.)	

ORDER OF DISMISSAL

Adopted: April 13, 2010

Released: April 13, 2010

By the Deputy Chief, Market Disputes Resolution Division, Enforcement Bureau:

I. INTRODUCTION

1. On September 16, 2009, NextG Networks of Illinois, Inc. (“NextG”) filed a pole attachment complaint¹ against RCN Telecom Services of Illinois, LLC (“RCN”) pursuant to section 224 of the Communications Act of 1934, as amended (the “Act”),² and section 1.1404 of the Commission’s rules³ alleging that RCN unlawfully denied access to RCN’s underground conduit, located in Illinois, for the purpose of placing NextG’s telecommunications lines. In its response, RCN argued that the Illinois Commerce Commission (“ICC”) regulates pole attachments for telecommunications services and therefore has preempted this Commission’s jurisdiction.⁴

2. On February 10, 2010, at the request of the Commission,⁵ the ICC filed comments in this proceeding stating that it has jurisdiction over the conduit at issue, and that it stands ready to adjudicate a dispute regarding pole attachments for telecommunications services. Specifically, the ICC stated that “Illinois has enacted a statutory scheme, which vests jurisdiction over the matter in the ICC” and that the ICC has “full authority to adjudicate an access dispute ... and to do so on an extraordinarily expedited

¹ Pole Attachment Complaint, File No. EB-09-MD-009 (filed Sept. 16, 2009) (“Complaint”).

² 47 U.S.C. § 224.

³ 47 C.F.R. § 1.1404.

⁴ First Amended Response of RCN Telecom Services of Illinois, LLC to Complaint of NextG Networks of Illinois, Inc. and Request for Dismissal with Prejudice, File No. EB-09-MD-009 (filed Oct. 15, 2009) (“Response”). See 47 U.S.C. § 224(c)(1) (“Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f) of this section, for pole attachments in any case where such matters are regulated by a State.”).

⁵ Letter from Lisa B. Griffin, Deputy Division Chief, Market Disputes Resolution Division, to Mary J. Stephenson Schroeder, General Counsel, Illinois Commerce Commission (dated Dec. 8, 2009).

basis.”⁶

3. On March 25, 2010, NextG filed an Uncontested Motion to Withdraw Complaint Without Prejudice.⁷ In the Motion to Withdraw, NextG states that, while it “does not necessarily concede that the ICC’s comments directly resolve the question of whether the ICC has adequately certified that it regulates the rates, terms, and conditions of conduit access for telecommunications providers,” NextG no longer requests access to RCN’s conduit at issue because the dispute is “currently moot.”⁸ NextG asserts that “[n]o party will be prejudiced by withdrawal of NextG’s Complaint without prejudice at this time.”⁹ The Motion to Withdraw further represents that “[c]ounsel for RCN has informed counsel for NextG that RCN will not oppose NextG’s withdrawal of its Complaint without prejudice as moot.”¹⁰ Based on the foregoing facts, we are satisfied that the parties have shown good cause for granting the request to dismiss the complaint.

4. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 224 of the Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 224, and sections 1.1401-1.1418 of the Commission’s rules, 47 C.F.R. §§ 1.1401-1.1418, and the authority delegated in sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311, that the Motion to Withdraw IS GRANTED.

5. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 224 of the Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 224, and sections 1.1401-1.1418 of the Commission’s rules, 47 C.F.R. §§ 1.1401-1.1418, and the authority delegated in sections 0.111 and 0.311 of the Commission’s rules, 47 C.F.R. §§ 0.111, 0.311, that NextG’s Complaint against RCN IS DISMISSED WITHOUT PREJUDICE.

FEDERAL COMMUNICATIONS COMMISSION

Lisa B. Griffin
Deputy Chief, Market Disputes Resolution Division
Enforcement Bureau

⁶ Comments of the Illinois Commerce Commission, File No. EB-09-MD-009 (filed Feb. 10, 2010) (“ICC Comments”) at 11, 13.

⁷ Uncontested Motion to Withdraw Complaint Without Prejudice, File No. EB-09-MD-009 (filed Mar. 25, 2010) (“Motion to Withdraw”).

⁸ Motion to Withdraw at 2, ¶ 4.

⁹ Motion to Withdraw at 2, ¶ 7.

¹⁰ Motion to Withdraw at 2, ¶ 6.